



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2009-0839; FRL-9799-5]

**Approval and Promulgation of Air Quality Implementation Plans;
Indiana; Redesignation of the Indianapolis Area to Attainment of
the 1997 Annual Standard for Fine Particulate Matter**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; supplemental.

SUMMARY: EPA is issuing a supplement to its proposed approval of the State of Indiana's request to redesignate the Indianapolis area to attainment for the 1997 annual National Ambient Air Quality Standards (NAAQS or standard) for fine particulate matter (PM_{2.5}). This supplemental proposal revises and expands the basis for proposing approval of the state's request, in light of developments since EPA issued its initial proposal on September 27, 2011. This supplemental proposal addresses four issues, including the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court): the Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR) and the Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 PM_{2.5} standard. In this supplemental proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by

the state. EPA is proposing that the inventories for ammonia and Volatile Organic Compounds (VOC), in conjunction with the inventories for nitrogen oxides (NO_x), direct PM_{2.5}, and sulfur dioxide (SO₂) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirement of the Clean Air Act (CAA). Finally, this supplemental proposal solicits comment on the state's January 17, 2013 submission of Motor Vehicle Emissions Budgets (MVEBs) developed using EPA's Motor Vehicle Emissions Simulator (MOVES) 2010a emissions model to replace the MOBILE6.2 based MVEBs previously submitted as part of the PM_{2.5} maintenance plan for the Indianapolis area. EPA is seeking comment only on the issues raised in its supplemental proposal, and is not re-opening for comment other issues raised in its prior proposal.

DATES: Comments must be received on or before [insert date 21 days after publication in the FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0839, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: Aburano.Douglas@epa.gov.
3. Fax: (312) 408-2279.
4. Mail: Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand delivery: Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2009-0839. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going

through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding

Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

- 1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
- 2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- 3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- 4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Is the Background for the Supplemental Proposal?

On October 20, 2009, the Indiana Department of Environmental Management (IDEM) submitted a request to EPA to redesignate the Indianapolis nonattainment area (Hamilton, Hendricks, Johnson, Marion, and Morgan counties) to attainment for the 1997 annual PM_{2.5} NAAQS, and for EPA approval of Indiana's state implementation plan (SIP) revision containing an emissions inventory and a maintenance plan for the area. IDEM supplemented its submission on May 31, 2011.

On September 27, 2011, EPA published notices of proposed (76 FR 59599) and direct final (76 FR 59512) rulemaking determining that the Indianapolis area has attained the 1997 annual PM_{2.5} standard and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In those rules EPA proposed several related actions. First, EPA

proposed to approve the request from IDEM to change the legal designation of the Indianapolis area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. EPA also proposed to approve Indiana's PM_{2.5} maintenance plan for the Indianapolis area as a revision to the Indiana SIP because the plan meets the requirements of section 175A of the CAA. In addition, EPA proposed to approve 2006 emissions inventories for primary PM_{2.5}, NO_x, and SO₂, documented in Indiana's May 31, 2011 PM_{2.5} redesignation request supplemental submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA found adequate and proposed to approve 2015 and 2025 direct PM_{2.5} and NO_x MVEBs for the Indianapolis area. EPA subsequently received adverse comments on the direct final rule and withdrew it on November 27, 2011 (76 FR 70361). The proposal was not withdrawn.

EPA today is issuing a supplement to its September 27, 2011 proposed rulemaking. This supplemental proposal addresses four separate issues which affect the proposed redesignation and which have arisen since the issuance of the proposal: two recent decisions of the D.C. Circuit, the State of Indiana's supplemental submission of comprehensive ammonia and VOC emissions inventories, and the State of Indiana's supplemental submission of revised MVEBs.

In the first of the two Court decisions, the D.C. Circuit,

on August 21, 2012, issued *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded CSAPR and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) "pending . . . development of a valid replacement." *EME Homer City* at 38.. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

In a supplemental submission to EPA on March 18, 2013, Indiana submitted 2007/2008 ammonia and VOC emissions inventories to supplement the emissions inventories that had previously been submitted. In a separate supplemental submission dated January 17, 2013, the state submitted MVEBs developed using EPA's MOVES 2010a emissions model to replace the MOBILE6.2 based MVEBs previously submitted as part of the PM_{2.5} maintenance plan for the Indianapolis area. Therefore, EPA's supplemental proposal revises and expands the basis for EPA's proposed approval of the state's request to redesignate the Indianapolis area to attainment for the 1997 PM_{2.5} standard, in

light of these developments since EPA's initial proposal.

III. On What Specific Issues Is EPA Taking Comments?

A. Effect of the August 21, 2012 D.C. Circuit Decision Regarding EPA's CSAPR

1. Background

In its September 27, 2011 proposal to redesignate the Indianapolis area, EPA proposed to determine that the emission reduction requirements that contributed to attainment of the 1997 annual PM_{2.5} standard in the nonattainment area could be considered permanent and enforceable. In the proposal, EPA noted that it had recently promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which had been in place since 2005. See 76 FR 59517. CAIR requires significant reductions in emissions of SO₂ and NO_x from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded that rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

CSAPR included regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control periods in 2012 and beyond. See 76 FR 48322.

Although Indiana's redesignation request and maintenance plan relied on reductions associated with CAIR, EPA proposed to approve the request based in part on the fact that CAIR was to remain in force through the end of 2011 and CSAPR would achieve "similar or greater reductions in the relevant areas in 2012 and beyond." 76 FR 59517.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued the decision in *EME Homer City*, to vacate and remand CSAPR and ordered EPA to continue administering CAIR "pending . . . development of a valid replacement." *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. The deadline to file petitions for certiorari to the U.S. Supreme Court has not passed.¹ Nonetheless, EPA intends to continue to

¹ Pursuant to Rule 13 of the U.S. Supreme Court Rules, a petition for certiorari must be filed within 90 days of the date of

act in accordance with the *EME Homer City* opinion. EPA is therefore issuing this portion of its supplemental proposal to explain the legal status of CAIR and CSAPR, and to provide a limited opportunity to comment specifically on the impact of the *EME Homer City* decision on the proposed redesignation of the Indianapolis area.

2. Supplemental Proposal on This Issue

In light of these unique circumstances and for the reasons explained below, EPA in this portion of its supplemental rule is seeking comment limited to the impact of the Court's decision in *EME Homer City* on EPA's proposal to approve the redesignation request and the related SIP revisions for the Indianapolis area, including Indiana's plan for maintaining attainment of the annual PM_{2.5} standard in the area. As explained in greater detail below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR. Indiana's SIP revision lists CAIR as a control measure that was adopted by the State in 2006 and

denial of rehearing. The Supreme Court may extend this deadline for good cause by up to 60 days.

required compliance by January 1, 2009. CAIR was thus in place and getting emission reductions when Indianapolis began monitoring attainment of the 1997 annual PM_{2.5} standard during the 2006-2008 time period. The quality-assured, certified monitoring data continues to show the area in attainment of the 1997 PM_{2.5} standard through 2011.

To the extent that Indiana is relying on CAIR in its maintenance plan to support continued attainment into the future, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs in response to it, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court's clear instruction to EPA is that it must continue to administer CAIR until a valid replacement exists, and thus EPA believes that CAIR emission reductions may be relied upon until the necessary

actions are taken by EPA and states to administer CAIR's replacement. Furthermore, the Court's instruction provides an additional backstop: by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate any significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Moreover, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states that reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for regulatory purposes

such as redesignations. Following promulgation of the replacement rule for CSAPR, EPA will review existing SIPs as appropriate to identify whether there are any issues that need to be addressed.

**B. Effect of the January 4, 2013 D.C. Circuit Decision
Regarding PM_{2.5} Implementation under Subpart 4**

1. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 PM_{2.5} Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 PM_{2.5} NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I.

2. Supplemental Proposal on This Issue

In this portion of EPA's supplemental proposal, EPA is soliciting comment on the limited issue of the effect of the Court's January 4, 2013 ruling on the proposed redesignation of Indianapolis to attainment for the 1997 annual PM_{2.5} standard.

As explained below, EPA is proposing to determine that the Court's January 4, 2013 decision does not prevent EPA from redesignating the Indianapolis area to attainment, because even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Indianapolis redesignation request and disregards the provisions of its 1997 PM_{2.5} implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 PM_{2.5} Implementation Rule, the Court's January 4, 2013 ruling rejected EPA's reasons for implementing the PM_{2.5} NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so

that it could address implementation of the 1997 PM_{2.5} NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating Indiana's redesignation request for the Indianapolis area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Indianapolis redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. See "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). See also "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor,

(60 FR 12459, 12465-66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424-27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment").² In this case, at the time that Indiana submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Indianapolis redesignation, the subpart 4 requirements were not due at the time Indiana submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA

² Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well.

Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements", for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas* (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D". Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements

that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These

are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of the Indianapolis redesignation, the timing and nature of the Court's January 4, 2013 decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. While Indiana submitted its redesignation request in 2009 and EPA proposed to approve it in 2011, the Court did not issue its decision remanding EPA's 1997 PM_{2.5} implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require Indiana's fully-completed and long-pending redesignation request to comply now with requirements of subpart 4 that the Court has just announced would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v.*

Whitman, 285 F.3d 63 (D.C. Cir. 2002),³ where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it "would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize Indiana by rejecting its redesignation request for an area that is already attaining the 1997 PM_{2.5} standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

³*Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n v. EPA*. 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

b. Subpart 4 Requirements and Indiana's Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013 decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the State submitted its redesignation request, EPA proposes to determine that the Indianapolis area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Indianapolis area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Indianapolis area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. See Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM₁₀⁴ nonattainment areas, and under the Court's January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM_{2.5} nonattainment areas. EPA has longstanding

⁴ PM₁₀ refers to particulates nominally 10 micrometers in diameter or smaller.

general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. See, "State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (the "General Preamble"). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM-10 requirements." 57 FR 13538 (April 16, 1992). EPA's previously published proposal for this redesignation action addressed how the Indianapolis area meets the requirements for redesignation under subpart 1. These subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Indianapolis area to be a "moderate" PM_{2.5} nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment

areas unless and until EPA reclassifies the area as a "serious" nonattainment area.⁵ Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) an approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM₁₀, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.⁶ In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not

⁵ Section 188(a) also provides that EPA publish a notice announcing the classification of each area under subpart 4.

⁶ The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." See also rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,⁷ when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM_{2.5} standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a

⁷I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

"General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990"; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, "The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard."

It is evident that even if we were to consider the Court's January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-

related requirements specific to subpart 4 should be imposed retroactively⁸ and thus are now past due, those requirements do not apply to an area that is attaining the 1997 PM_{2.5} standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior "Clean Data Policy" rulemakings for the PM₁₀ NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). *See also* Coso Junction

⁸ As EPA has explained above, we do not believe that the Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

proposed PM₁₀ redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954-55, July 19, 2006; and 71 FR 63641, 63643-47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

In its September 27, 2011 proposal for this action, EPA proposed to determine that the Indianapolis area has attained the 1997 PM_{2.5} standard and therefore meets the attainment-related plan requirements of subpart 1. Under its longstanding interpretation, EPA is proposing to determine here that the area also meets the attainment-related plan requirements of subpart 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c) and section 189(a)(1)(c), and a RFP demonstration under 189(c)(1) are satisfied for purposes of evaluating the redesignation request.

c. Subpart 4 and Control of PM_{2.5} Precursors

The D.C. Circuit in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4.

The Court's opinion raises the issue of the appropriate approach to addressing PM_{2.5} precursors in this and future EPA actions. While past implementation of subpart 4 for PM₁₀ has allowed for control of PM₁₀ precursors such as NO_x from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM₁₀ shall also apply to PM₁₀ precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM₁₀ levels which exceed the standard in the area."

EPA's 1997 PM_{2.5} implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain PM_{2.5} precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC [and ammonia] as . . . PM_{2.5} attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures." EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM_{2.5} concentrations. EPA also left open the

possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, "In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not PM_{2.5} precursors, as subpart 4 expressly governs precursor presumptions." *NRDC v. EPA*, at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

Ammonia is a precursor to fine particulate matter, making it a precursor to both PM_{2.5} and PM₁₀. For a PM₁₀ nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

Id. at 21, n.7.

For a number of reasons, EPA believes that the Court's decision on this aspect of subpart 4 does not preclude EPA's approval of Indiana's redesignation request for the 1997 PM_{2.5} NAAQS. First, while the Court, citing section 189(e), stated that "for a PM₁₀ area governed by subpart 4, a precursor is 'presumptively regulated,'" the Court expressly declined to decide the specific challenge to EPA's 1997 PM_{2.5} implementation

rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM_{2.5} nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as PM_{2.5} precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Indianapolis, EPA believes that doing so would not affect the approvability of the proposed redesignation of the area for the 1997 PM_{2.5} standard. Indianapolis has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of

PM₁₀ precursors.⁹ Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM_{2.5} precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Indianapolis area for the 1997 PM_{2.5} standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). See 57 FR 13538-13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA in this supplemental proposal proposes to determine that the Indiana SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed supplemental determination is based on our findings that (1) the Indianapolis area contains no major stationary sources of

⁹ Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.¹⁰ In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Indianapolis area, which is attaining the 1997 annual PM_{2.5} standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 PM_{2.5} standard in the Indianapolis area. See 57 FR 13539-13542.

EPA notes that its 1997 PM_{2.5} implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM_{2.5} precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 PM_{2.5} NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013 decision as calling for "presumptive regulation" of ammonia and VOC for PM_{2.5} under the attainment planning provisions of subpart

¹⁰The Indianapolis area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Indiana to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM₁₀ contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.¹¹ Courts have upheld this approach to the requirements of subpart 4 for PM₁₀.¹² EPA believes that application of this approach to PM_{2.5} precursors under subpart 4 is reasonable. Because the Indianapolis area has already attained the 1997 PM_{2.5} NAAQS with its current

¹¹See, e.g., "Approval and Promulgation of Implementation Plans for California - San Joaquin Valley PM-10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM-10 Standards," 69 FR 30006 (May 26, 2004) (approving a PM10 attainment plan that impose controls on direct PM10 and NO_x emissions and did not impose controls on SO₂, VOC, or ammonia emissions).

¹²See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

approach to regulation of PM_{2.5} precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Indiana's request for redesignation of the Indianapolis area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the Court as precluding redesignation of the Indianapolis area to attainment for the 1997 PM_{2.5} NAAQS at this time.

In sum, even if Indiana were required to address precursors for the Indianapolis area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded PM_{2.5} implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

d. Maintenance Plan and Evaluation of Precursors

With regard to the redesignation of Indianapolis, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as PM_{2.5} precursors, EPA in this supplemental proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 PM_{2.5} standard and that the state has shown that attainment of that standard is due to permanent and enforceable emission reductions.

In its prior proposal notice for this action, EPA proposed to determine that the State's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 PM_{2.5} standard in the Indianapolis area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013 decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan for the Indianapolis area need not

include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Indianapolis area are very low, estimated to be less than 4,000 tons per year. See Table 4 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO₂, NO_x, and even direct PM_{2.5} emissions from sources in the area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the State's maintenance demonstration.

Indiana's maintenance plan shows that emissions of direct PM_{2.5}, SO₂, and NO_x are projected to decrease by 1,048 tons per year (tpy), 11,301 tpy, and 39,894 tpy, respectively, over the maintenance period. See Tables 1-3 below. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 PM_{2.5} NAAQS show that VOC and ammonia emissions are projected to decrease by 14,551 tpy and 99 tpy, respectively between 2007 and 2020. See Table 4 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not

continue through 2025. Given that the Indianapolis area is already attaining the 1997 PM_{2.5} NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 1997 PM_{2.5} NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2025, the overall emissions reductions projected in direct PM_{2.5}, SO₂, and NO_x would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM_{2.5} precursors will not increase to the extent that they will cause monitored PM_{2.5} levels to violate the 1997 PM_{2.5} standard during the maintenance period.

Table 1: Comparison of 2008, 2015, 2020, and 2025 Direct PM_{2.5} Emission Totals by Source Sector (tpy) for the Indianapolis Area

Sector	Direct PM _{2.5}				Net Change 2008-2025
	2008	2015	2020	2025	
Point	843	823	806	790	-53
EGU ¹³	1,966	2,568	2,568	2,568	601
Area	85	82	79	76	-9
Nonroad	805	538	384	282	-524

¹³ Electric generating units

On-road¹⁴	1,464	742	571	400	-1,064
Total	5,164	4,753	4,408	4,116	-1,048

Table 2: Comparison of 2008, 2015, 2020, and 2025 SO₂ Emission Totals by Source Sector (tpy) for the Indianapolis Area

Sector	SO₂				
	2008	2015	2020	2025	Net Change 2008-2025
Point	2,416	1,632	1,605	1,579	-837
EGU	38,027	28,315	28,314	28,314	-9,713
Area	1,830	1,778	1,732	1,687	-143
Nonroad	576	166	89	57	-519
On-road¹⁵	654	498	532	565	88
Total	43,503	32,389	32,272	32,202	-11,301

Table 3: Comparison of 2008, 2015, 2020, and 2025 NO_x Emission Totals by Source Sector (tpy) for the Indianapolis Area

Sector	NO_x				
	2008	2015	2020	2025	Net Change 2008-2025
Point	6,259	6,268	6,183	6,099	-161
EGU	7,184	6,865	6,864	6,863	-321
Area	4,886	4,809	4,727	4,646	-240
Nonroad	10,954	7,147	4,961	3,545	-7,409
On-road¹⁴	43,389	22,013	16,819	11,625	-31,76
Total	72,672	47,101	39,554	32,778	-39,894

¹⁴Emissions projections for the on-road sector were generated using the MOVES model. Indiana submitted the MOVES based NO_x and direct PM_{2.5} emissions projections and MVEBs for the on-road sector on January 17, 2013, to replace the MOBILE6.2 based on-road emissions projections and MVEBs submitted as part of the maintenance plan.

¹⁵ On-road sector emissions were projected using the MOBILE6.2 emissions model.

Table 4: Comparison of 2007 and 2020 VOC and Ammonia Emission Totals by Source Sector (tpy) for the Indianapolis Area¹⁶

Sector	VOC			Ammonia		
	2007	2020	Net Change 2007-2020	2007	2020	Net Change 2007-2020
Point	1,699	1,716	17	58	68	10
Area	27,618	27,516	-102	3,056	3,198	142
Nonroad	7,114	4,121	-2,993	11	14	3
On-road	17,972	6,499	-11,473	636	382	-254
Fires	113	113	0	8	8	0
Total	54,516	39,965	-14,551	3,769	3,670	-99

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the area is 13.1 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) (based on 2009-11 air quality data), which is well below the 1997 annual $\text{PM}_{2.5}$ NAAQS of 15 $\mu\text{g}/\text{m}^3$. Moreover, the modeling analysis conducted for the RIA for the 2012 $\text{PM}_{2.5}$ NAAQS indicates that the design value for this area is expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled design value for the Indianapolis area is 10.4 $\mu\text{g}/\text{m}^3$. Given that precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored $\text{PM}_{2.5}$ levels in this area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Indianapolis area should be redesignated, even

¹⁶ These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $\text{PM}_{2.5}$ NAAQS

taking into consideration the emissions of other precursors potentially relevant to PM_{2.5}. After consideration of the D.C. Circuit's January 4, 2013 decision, and for the reasons set forth in this supplemental notice, EPA continues to propose approval of the State of Indiana's maintenance plan and its request to redesignate the Indianapolis area to attainment for the 1997 PM_{2.5} annual standard.

C. Ammonia and VOC Comprehensive Emissions Inventories

EPA in this supplemental proposal also addresses the State of Indiana's supplemental submission that provides additional information concerning ammonia and VOC emissions in the Indianapolis area in order to meet the emissions inventory requirement of CAA section 172(c)(3). Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current emissions inventory for a nonattainment area. For purposes of the PM_{2.5} NAAQS, this emissions inventory should address not only direct emissions of PM_{2.5}, but also emissions of all precursors with the potential to participate in PM_{2.5} formation, i.e., SO₂, NO_x, VOC and ammonia.

In the September 27, 2011 proposed rule, EPA proposed to approve the emissions inventory information for direct PM_{2.5}, NO_x, and SO₂ submitted by IDEM as meeting the emissions inventory requirement for the Indianapolis area. On March 18, 2013, IDEM supplemented its submittal with 2007/2008 emissions inventories

for ammonia and VOC. The additional emissions inventory information provided by the State addresses emissions of VOC and ammonia from the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources. The state-submitted emissions inventories were based upon information generated by the Lake Michigan Air Directors Consortium (LADCO) in conjunction with its member states and are presented in Table 5 below.

LADCO ran the EMS model using data provided by the State of Indiana to generate point source emissions estimates. The point source data supplied by the state was obtained from Indiana's source facility emissions reporting.

For area sources, LADCO ran the EMS model using the 2008 National Emissions Inventory (NEI) data provided by Indiana. LADCO followed Eastern Regional Technical Advisory Committee (ERTAC) recommendations on area sources when preparing the data. Agricultural ammonia emissions were not taken from NEI; instead emissions were based on Carnegie Mellon University's Ammonia Emission Inventory for the Continental United States (CMU). Specifically, the CMU 2002 annual emissions were grown to reflect 2007 conditions. A process-based ammonia emissions model developed for LADCO was then used to develop temporal factors to reflect the impact of average meteorology on livestock emissions.

Non-road mobile source emissions were generated using the NMIM2008 emissions model. LADCO also accounted for three other non-road categories not covered by the NMIM model: commercial marine vessels, aircraft, and railroads. Marine emissions were based on reports prepared by Environ entitled "LADCO Nonroad Emissions Inventory Project for Locomotive, Commercial Marine, and Recreational Marine Emission Sources, Final Report, December 2004" and "LADCO 2005 Commercial Marine Emissions, Draft, March 2, 2007." Aircraft emissions were provided by Indiana and calculated using AP-42 emission factors and landing and take-off data provided by the Federal Aviation Administration. Rail emissions were based on the 2008 inventory developed by ERTAC.

On-road mobile source emissions were generated using EPA's MOVES2010a emissions model.

EPA notes that the emissions inventory developed by LADCO is documented in "Regional Air Quality Analyses for Ozone, PM_{2.5}, and Regional Haze: Base C Emissions Inventory" (September 12, 2011).

Table 5. Indianapolis Area Ammonia and VOC Emissions (tpy) for 2007/2008 by Source Sector

Sector	Ammonia	VOC
Point	41.73	1,284.14
Area	3,139.54	27,646.25
Non-road	10.51	8,277.20
On-road	685.41	21,866.66
Total	3,877.19	59,074.25

EPA has concluded that the 2007/2008 ammonia and VOC emissions inventories provided by the State are complete and as accurate as possible given the input data available for the relevant source categories. EPA also believes that these inventories provide information about VOC and ammonia as $PM_{2.5}$ precursors in the context of evaluating redesignation of the Indianapolis area under subpart 4. Therefore, we are proposing to approve the ammonia and VOC emissions inventories submitted by the State, in conjunction with the NO_x , direct $PM_{2.5}$, and SO_2 emissions inventories that EPA previously proposed to approve, as fully meeting the comprehensive inventory requirement of section 172(c)(3) of the CAA for the Indianapolis area for the 1997 annual $PM_{2.5}$ standard. Since EPA's prior proposal addressed other precursor emissions inventories, EPA in this supplemental proposal is seeking comment only with respect to the additional inventories for VOC and ammonia that Indiana has submitted.

D. MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Indianapolis Area?

On January 17, 2013, Indiana submitted to EPA a request to revise its maintenance plan for the Indianapolis area by replacing the previously submitted MOBILE6.2 based MVEBs with budgets developed using EPA's MOVES 2010a emissions model.

Under the CAA, states are required to submit, at various

times, control strategy SIP revisions and maintenance plans for nonattainment areas and for areas seeking redesignation to attainment for a given NAAQS. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for the relevant criteria pollutants and/or their precursors, where appropriate, to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to on-road vehicle use that, together with emissions from all other sources in the area, will provide for attainment, RFP, or maintenance, as applicable. The budget serves as a ceiling on emissions from an area's planned transportation system. Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. See the September 27, 2011 notice of direct final approval for a more complete discussion of MVEBs. (76 FR 59512).

EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget, EPA must complete a thorough review of the SIP, in this case the PM_{2.5} maintenance plan, and conclude that with the projected level of motor vehicle and all other emissions, the SIP will achieve its overall purpose, in this case providing for maintenance of the

1997 annual $PM_{2.5}$ standard.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plan revision submitted by Indiana for the Indianapolis area contains primary $PM_{2.5}$ and NO_x MVEBs for the area for the years 2015 and 2025.

IDEM has determined the 2015 MVEBs for the Indianapolis area to be 853.76 tpy for primary $PM_{2.5}$ and 25,314.49 tpy for NO_x . IDEM has determined the 2025 MVEBs for the Indianapolis area to be 460.18 tpy for primary $PM_{2.5}$ and 13,368.60 tpy for NO_x . These MVEBs exceed the on-road mobile source primary $PM_{2.5}$ and NO_x emissions projected by IDEM for 2015 and 2025, as summarized in Table 6 below. IDEM decided to include "safety margins" as provided for in 40 CFR 93.124(a) (described further below) of 111.36 tpy and 60.02 tpy for primary $PM_{2.5}$ and 3,301.89 tpy and 1,743.73 tpy for NO_x in the 2015 and 2025 MVEBs, respectively, to provide for on-road mobile source growth. Indiana did not provide emission budgets for SO_2 , VOC, and ammonia because it concluded, consistent with the presumptions regarding these precursors in the conformity rule at 40 CFR 93.102(b)(2)(v),

which predated and was not disturbed by the litigation on the PM_{2.5} implementation rule, that emissions of these precursors from motor vehicles are not significant contributors to the area's PM_{2.5} air quality problem.

EPA issued conformity regulations to implement the 1997 PM_{2.5} NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC v. EPA*, No. 08-1250 (Jan. 4, 2013), in which the Court remanded to EPA the implementation rule for the PM_{2.5} NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the Indianapolis MVEBs.

First, as noted above, EPA's conformity rule implementing the 1997 PM_{2.5} NAAQS was a separate action from the overall PM_{2.5} implementation rule addressed by the Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC v. EPA*.¹⁷ In

¹⁷ The 2004 rulemaking addressed most of the transportation conformity requirements that apply in PM_{2.5} nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of PM_{2.5} precursors in MVEBs. See 40 CFR

addition, as discussed in section III.B., the Indianapolis area is attaining the 1997 annual standard for PM_{2.5} with a 2009-2011 design value of 13.1 µg/m³, which is well below the annual PM_{2.5} NAAQS of 15 µg/m³. The modeling analysis conducted for the RIA for the 2012 PM NAAQS indicates that the design value for this area is expected to continue to decline through 2020. Further, the State's maintenance plan shows continued maintenance through 2025 by demonstrating that NO_x, SO₂, and direct PM_{2.5} emissions continue to decrease through the maintenance period. For VOC and ammonia, RIA inventories for 2007 and 2020 show that both on-road and total emissions for these pollutants are expected to decrease, supporting the state's conclusion, consistent with the presumptions regarding these precursors in the conformity rule, that emissions of these precursors from motor vehicles are not significant contributors to the area's PM_{2.5} air quality problem and the MVEBs for these precursors are unnecessary. With regard to SO₂, the 2005 final conformity rule (70 FR 24280) based its presumption concerning on-road SO₂ motor vehicle emissions budgets on emissions inventories that show that SO₂ emissions from on-road sources constitute a "de minimis" portion of total SO₂ emissions. As shown elsewhere in this supplemental proposal,

93.102(b)(2). While none of these provisions were challenged in the NRDC case, EPA also notes that the Court declined to address challenges to EPA's presumptions regarding PM_{2.5} precursors in the PM_{2.5} implementation rule. *NRDC v. EPA*, at 27, n. 10.

on-road emissions in 2025 are less than 2% of total SO₂ emissions in the area. While on-road SO₂ emissions reach a low point in 2015 and gradually begin to increase, these increases are small in the context of the entire SO₂ inventory and, even with those increases, the on-road emissions are lower in 2025 than in the base year. Moreover, the revised MVEBs simply update the budget calculations using MOVES, as explained above.

Table 6. On-road Mobile Source Emissions Estimates (tpy) and Budgets

	NO _x			PM _{2.5}		
	Emissions Estimate	Budget	Safety Margin	Emissions Estimate	Budget	Safety Margin
2008	43,388.93			1,463.72		
2015	22,012.60	25,314.49	3,301.89	742.40	853.76	111.36
2025	11624.87	13,368.60	1,743.73	400.16	460.18	60.02

2. What Are Safety Margins?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 3, NO_x emissions in the Indianapolis area are projected to have safety margins of 25,571 tpy and 39,894 tpy in 2015 and 2025, respectively (the difference between the attainment year, 2008, emissions and the projected 2015 and 2025 emissions for all sources in the Indianapolis area). Table 1 shows direct PM_{2.5} emissions in the Indianapolis area are projected to have a safety margin of 412 tpy and 1,048 tpy in 2015 and 2025,

respectively. Even if emissions reached the full level of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

The transportation conformity rule allows areas to allocate all or a portion of a "safety margin" to the area's motor vehicle emissions budgets (40 CFR 92.124(a)). The MVEBs requested by IDEM contain NO_x and direct PM_{2.5} safety margins for mobile sources in 2015 and 2025 smaller than the allowable safety margins reflected in the total emissions inventory for the Indianapolis area. Thus, the State is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State has submitted MVEBs that exceed the projected on-road mobile source emissions for 2015 and 2025 contained in the demonstration of maintenance, the differences between the MVEBs and the projected on-road mobile source emissions are well within the safety margins of the PM_{2.5} maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

EPA has reviewed the submitted budgets for 2015 and 2025, including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has determined that the area can maintain

attainment of the 1997 annual PM_{2.5} NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs since total emissions will still remain under attainment year emission levels. EPA is therefore proposing to approve the MOVES based MVEBs submitted by Indiana for use in determining transportation conformity in the Indianapolis area.

IV. Summary of Proposed Actions

After fully considering the D.C. Circuit's decisions in *EME Homer City* on EPA's CSAPR rule, and *NRDC v. EPA* on EPA's 1997 PM_{2.5} Implementation rule, EPA in this supplemental notice is proposing to proceed with approval of the request to redesignate the Indianapolis area to attainment for the 1997 annual PM_{2.5} NAAQS and of the associated maintenance plan. In this supplemental notice, EPA is also proposing to approve the 2007/2008 ammonia and VOC emissions inventories as meeting, in conjunction with the NO_x, direct PM_{2.5} and SO₂ inventories that EPA previously proposed to approve, the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. Finally, EPA is proposing to approve Indiana's MOVES-based NO_x and direct PM_{2.5} MVEBs for 2015 and 2025 for the Indianapolis area for transportation conformity purposes. EPA is seeking comment only on the issues raised in its supplemental proposals, and is not re-opening comment on other issues addressed in its

prior proposal.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these proposed actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks,
Wilderness areas.

Dated: March 28, 2013.

Susan Hedman,
Regional Administrator, Region 5.

[FR Doc. 2013-08122 Filed 04/05/2013 at 8:45 am; Publication
Date: 04/08/2013]